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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/766,318	01/28/2004	Vernon R. Berg	1327.18133-PROV FOR	1205
26308	7590	10/27/2004	EXAMINER	
RYAN KROMHOLZ & MANION, S.C. POST OFFICE BOX 26618 MILWAUKEE, WI 53226			HAYES, BRET C	
		ART UNIT		PAPER NUMBER
				3644

DATE MAILED: 10/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/766,318	BERG, VERNON R.
	Examiner Bret C Hayes	Art Unit 3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) 2,3 and 6 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 January 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)              |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>04/26/2004</u> . | 6) <input type="checkbox"/> Other: _____.  |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: page 3, line 35, “40” should be --140--.

Appropriate correction is required.

### ***Claim Objections***

2. Claim 13 is objected to because of the following informalities: line 2, insert --:-- (a colon) after “providing”, and remove “an”. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2, 3 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Re – claims 2 and 3, the recitation that the switches are “carried by a housing” is improper idiomatic English and unclear. Examiner suggests, --mounted in a housing-- or -- mounted on a housing--, depending upon the intent of the disclosure.

6. Re – claim 6, likewise, the recitations that the housings are ‘for carrying’ are unclear.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1 – 5 and 9 – 13 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,319,678 to Hesler.

9. Re – claim 1, Hesler discloses the claimed invention including: a device for cleaning animal waste from stalls comprising: a first motorized drum 138; a second motorized drum 148; a cable 115 extending between said first 138 and said second 148 motorized drums; a scraper 10 carried by said cable 115; a switch tripper 50, 60 carried by said cable 115; a switch 201, 202 in communication with said first motorized drum 138; said switch 201, 202 responsive to said switch tripper 50, 60 to perform at least one of the following: moving the cable 115 in a first direction 112, moving the cable 115 in a second direction 113, and stopping movement of said cable 115.

10. Re – claims 2 and 3, while Hesler does not explicitly disclose the switch 201, 202 being carried by a housing, it is inherent in the art of sensor switches to place the electronics in some type of a housing in order to prevent corrosion of the electrical elements, and, from Fig. 1, for example, it would appear that the switches 201, 202 are being ‘carried by housings’.

11. Re – claim 4, Hesler further discloses an override stop 200 between the switch 201, 202 and the second drum 148.

12. Re – claim 5, Hesler further discloses a wheel 175 for such a purpose.

13. Re – claims 9 and 10, Hesler further discloses a control box 200 with manual operable controls, see col. 10, lines 34 – 37, for example, and the controls including forward, reverse, stop and go in communication with the drums 138, 148, see col. 10, lines 29 – 62, for example.

14. Re – claim 11, Hesler further discloses the drums **138, 148** being coupled with a motor **123** by a roller chain drive **126**.

15. Concerning method claims 12 and 13, in view of the structure disclosed by Hesler as provided above, the method of operating the device would have been inherent, since it is the normal and logical manner in which the device could be used.

***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 6 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hesler as applied above.

18. Re – claim 6, Hesler discloses the invention substantially as claimed including a drum housing (the base that the entirety of the mechanism rests upon, see Fig. 6, for example) except for a first drum housing <sup>and</sup> <sup>^</sup> a second drum housing for carrying the drums **138, 148**. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use multiple housing for carrying the drums, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St, Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

19. Re – claim 7, Hesler discloses the invention substantially as claimed as applied above. Hesler discloses the housing being ‘canted’ from a direction of travel **112, 113**. Also, it is inherent in any mechanical set up not requiring exceeding precision with regard to cable drawing

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direction, perhaps especially so for a set up of this nature in a livestock containment unit, for the housing to be at least somewhat 'canted' as the necessity of being 'dead on' accurate with respect to the cable drawing direction in this application is minimal and probably only 'eyeballed' at best.

20. Re – claim 8, Hesler further discloses the drums 138, 148 being coupled to the housing by a bearing 139 – apparently 'pillow block' type bearings.

***Conclusion***

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

10/20/04



TERI P. LUU  
SUPERVISORY PRIMARY EXAMINER